

**IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF PENNSYLVANIA**

DAVID BURKES on behalf of himself and
others similarly situated,

Plaintiff,

v.

CIVIL ACTION NO. 2:22-CV-01054-WSH

ARIAS AGENCIES, and AMERICAN
INCOME LIFE INSURANCE COMPANY

Defendants.

**DEFENDANT AMERICAN INCOME LIFE INSURANCE COMPANY’S
MOTION TO COMPEL INDIVIDUAL ARBITRATION AND TO DISMISS**

Pursuant to Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, Defendant American Income Life Insurance Company (“AIL”) respectfully moves the Court for an order compelling Plaintiff David Burkes and Opt-in Plaintiffs Toby Painter, Abeni Mayfield, Mikelle Mayfield, Nicholas Atallah, Jennifer Reed, Meredith Carrier, Hunter Renninger, Tyler Szpakowski, Emily Fleming (née Marous), Brendan Gilbert, Christina Quillen, Joseph Lamb, Christopher Gilbert, and Corey Rodriguez (collectively, “Plaintiffs”) to arbitrate their claims on an individual basis. Plaintiffs have all stipulated that their claims are subject to binding, individual arbitration, and their claims must accordingly be ordered to arbitration.

In addition, because all of Plaintiffs’ claims are subject to arbitration, AIL respectfully moves that the Court dismiss this action without prejudice pursuant to Federal Rule of Civil Procedure (“FRCP”) 12(b)(1) for lack of subject matter jurisdiction. Alternatively, AIL moves the Court to dismiss this action without prejudice pursuant to FRCP 12(b)(6). Plaintiffs concede that all of their claims are subject to individual arbitration, and Plaintiffs’ counsel was aware of prior orders from courts within this District compelling arbitration of similar claims against AIL

under a substantially identical arbitration agreement. Plaintiffs thus had no justification for filing their claims in this forum in the first instance.

1. In support of this Motion, AIL states that each of the Plaintiffs entered into valid arbitration agreements with AIL that cover all claims in this action.
2. In support of this Motion, AIL states that all Plaintiffs have stipulated that their claims are subject to binding, individual arbitration.
3. In support of this Motion, AIL states that Plaintiffs filed this action in this Court and unjustifiably refused to dismiss it without prejudice even after conceding that all of Plaintiffs' claims were subject to binding, individual arbitration.
4. In support of this Motion, AIL refers the Court to the Declarations of Debra Gamble and Jeffrey Hammer, sworn to on October 24, 2022.

WHEREFORE, AIL respectfully requests that the Court issue an Order:

- a. Compelling Plaintiff David Burkes and Opt-in Plaintiffs Toby Painter, Abeni Mayfield, Mikelle Mayfield, Nicholas Atallah, Jennifer Reed, Meredith Carrier, Hunter Renninger, Tyler Szpakowski, Emily Fleming (née Marous), Brendan Gilbert, Christina Quillen, Joseph Lamb, Christopher Gilbert, and Corey Rodriguez to arbitrate their claims on an individual basis;
- b. Dismissing this case without prejudice; and
- c. Affording AIL any other relief that the Court deems just and proper.

Signature Below

Respectfully submitted,

AMERICAN INCOME LIFE INSURANCE
COMPANY,

By its attorneys,

Dated: October 24, 2022

/s/ Albert Giang

Albert Giang (admitted *pro hac vice*)
Jeffrey Hammer (admitted *pro hac vice*)
Ramon Miyar (admitted *pro hac vice*)
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CERTIFICATE REGARDING MEET-AND-CONFER EFFORTS

Pursuant to the Court's order dated July 26, 2022 (ECF No. 5), the undersigned counsel for Defendant American Income Life Insurance Company hereby certifies that, prior to filing this Motion, the Parties met and conferred in good faith regarding the enforceability of Plaintiffs' arbitration agreements, the coverage of Plaintiffs' claims under their arbitration agreements, and the appropriate disposition of this case following the submission of Plaintiffs' claims to individual arbitration. The Parties' counsel conferred via videoconference on August 22, 2022, September 14, 2022, and October 10, 2022, and e-mail exchanges dated August 30, 2022, September 6, 2022, September 22, 2022, and September 27, 2022. Plaintiffs were unwilling to agree to the dismissal of this action notwithstanding Plaintiffs' counsel's concession and stipulation that Plaintiffs' claims were subject to arbitration, thus necessitating the foregoing motion.

Signature Below

Respectfully submitted,

AMERICAN INCOME LIFE INSURANCE COMPANY,

By its attorneys,

Dated: October 24, 2022

/s/ Albert Giang

Albert Giang (admitted *pro hac vice*)
Jeffrey Hammer (admitted *pro hac vice*)
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